Marine Environmental Update

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Sound Science for Endangered Species Act Planning Act of 2002 Introduced

On May 23, 2002, Representative James Hansen (R-UT) introduced House Resolution 4840 to amend the Endangered Species Act of 1973 (ESA) to ensure the use of sound science in the implementation of the ESA. H.R. 4840 would require the use of the best scientific and commercial data available as a basis of determinations on a petition to add or remove a species from the endangered species list. The bill would direct the Secretary of the Interior to give greater weight to any scientific or commercial study or other information that is empirical or has been field-tested or peer-reviewed.

The bill would require that a petition regarding a species contain clear and convincing evidence of the current and historic ranges of the species concerned, of the most recent population estimates and trends for the species, that any alleged change in the population is beyond normal fluctuations, and of the reason that the petitioned action is warranted.

It would direct the Secretary to: (1) promulgate regulations that establish criteria that must be met for scientific and commercial information to be used as the basis of a determination to support listing a species; and (2) identify and publish in the Federal Register with notice of a proposed regulation a description of additional scientific and commercial data that would assist in the preparation of a recovery plan. The bill would prohibit the Secretary from determining that a species is endangered or threatened unless field data collected supports the determination.

ALSO IN THIS ISSUE:

Read me on-line at: http://meso.spawar.navy.mil/Newsltr

The bill would require the appointment of an independent review board to review and report on the scientific information and analyses on which a covered action is based before such covered action becomes final. It would also provide specified participation opportunities to any person who has sought authorization of funding from a Federal agency for an action that is subject to consultation regarding its effects on endangered or threatened species or habitats.

On July 10, 2002, the House Resources Committee reported the bill to the full House.

House Resolution 4840 (16.8 KB text file or 47.1 KB Adobe™ Acrobat™ file).

Methods For Evaluating Wetland Condition

The Environmental Protection Agency is publishing a series of modules, collectively titled "Methods for Evaluating Wetland Condition," to help states and tribes build their capacity to monitor and assess the biological and nutrient conditions of wetlands. Few states monitor wetland health or have fully incorporated wetlands into their water quality programs. The modules will provide information to state and tribal water quality managers on how to conduct ecological assessments of wetland health. The modules focus on biological and nutrient assessment techniques and can be used for the development of biological and nutrient criteria for wetlands. These modules also will serve as a basis for developing future EPA guidance for wetlands water quality. The EPA also intends to use this material to develop more detailed guidance on these topics. The modules were written by government, private and academic members of the EPA Wetland Nutrient Criteria and the Biological Assessment of Wetlands Workgroups, under the guidance of the EPA's Office of Science and Technology and Office of Wetlands, Oceans and Watersheds. External experts reviewed all modules. Modules available now are:

- Introduction to Wetland Biological Assessment (#1)
- Study Design for Monitoring Wetlands (#4)
- Developing Metrics and Indexes of Biological Integrity (#6)
- Wetlands Classification (#7)
- Volunteers and Wetland Biomonitoring (#8)
- Developing an Invertebrate Index of Biological Integrity for Wetlands (#9)
- Using Vegetation To Assess Environmental Conditions in Wetlands (#10)
- Using Algae To Assess Environmental Conditions in Wetlands (#11)
- Using Amphibians in Bioassessments of Wetlands (#12)
- Biological Assessment Methods for Birds (#13)
- Vegetation-Based Indicators of Wetland Nutrient Enrichment (#16)
- Land-Use Characterization for Nutrient and Sediment Risk Assessment (#17)

Modules soon to be available are:

- Introduction to Wetland Nutrient Assessment (#2)
- The State of Wetland Science (#3)

- Administrative Framework for the Implementation of a Wetland Bioassessment Program (#5)
- Wetland Bioassessment Case Studies (#14)
- Bioassessment Methods for Fish (#15)
- Biogeochemical Indicators (#18)
- Nutrient Load Estimation (#19)
- Sustainable Nutrient Loading (#20)

The modules are available at: http://www.epa.gov/waterscience/criteria/wetlands/index.html.

EPA Releases Draft Urban Nonpoint Source Management Measures Guidance

On September 9, 2002, the EPA announced the availability of the draft *National Management Measures to Control Nonpoint Source Pollution from Urban Areas*. The draft guidance was written to provide information useful in the development, implementation and enhancement of new and existing urban runoff management programs. The guidance was structured to reflect the major phases and elements that should generally be included and implemented in an effective urban runoff/storm water program. The guidance contains a set of twelve management measures that address various aspects of program development, from planning and assessment to management practice selection and eventually program monitoring and evaluation. Each management measure is a collection of management actions or program elements that the EPA has determined are important to prevent and reduce urban NPS pollution.

The EPA provided a list of practices that can be used to implement the objectives of each management measure. Both nonstructural and structural management practices are included in the guidance. The EPA is accepting written comments until December 9, 2002. For further information contact Rod Frederick at (202) 566-1197 or email: frederick.rod@epa.gov. The draft guidance is available from MESO (10.2 MB Adobe™ Acrobat™ file) or at http://www.epa.gov/owow/nps/urbanmm/.

Federal Register, Volume 67, Number 174, Monday, September 9, 2002, pp. 57228-57230 (10.9 KB text file or 47.6 KB Adobe™ Acrobat™ file).

U.S. EPA. National Management Measures to Control Nonpoint Source Pollution from Urban Areas--Draft. EPA 842-B-02-003. July, 2002.

Real-Time Monitoring For Toxicity Caused By Harmful Algal Blooms And Other Water Quality Perturbations

On August 14, 2002, the Environmental Protection Agency's National Center for Environmental Assessment (NCEA) , released a report entitled "Real-Time Monitoring for Toxicity Caused by Harmful

Algal Blooms and Other Water Quality Perturbations" (EPA/600/R-01/103). The project, sponsored by the EPA's Environmental Monitoring for Public Access and Community Tracking (EMPACT) program, evaluated the ability of an automated biological monitoring system that measures fish ventilatory responses (ventilatory rate, ventilatory depth, and cough rate) to detect developing toxic conditions in water. The document can be downloaded from the web at http://www.epa.gov/ncea.

Federal Register, Volume 67, Number 157, Wednesday, August 14, 2002, p. 53001 (2.94 KB text file or 34.5 KB Adobe™ Acrobat™ file).

Petition To List Southern Resident Killer Whale As Threatened Or Endangered Rejected

On July 1, 2002, National Marine Fisheries Service announced a 12-month finding for a petition to list Southern Resident killer whales (*Orcinus orca*) as threatened or endangered under the Endangered Species Act (ESA) (see *Marine Environmental Update*, Vol. FY01, No. 4). After a review of the best available scientific and commercial information, the agency found that listing the Southern Resident killer whales was not warranted at this time because these killer whales do not constitute a species, subspecies, or distinct population segment (DPS) under the ESA.

The NMFS reviewed the petition, the report of the Biological Review Team (BRT), co-manager comments, and other available information, and consulted with species experts and other individuals familiar with killer whales. On the basis of the best available scientific and commercial information, the agency found that the petitioned action was not warranted because the petitioned group of killer whales does not constitute a DPS of the currently recognized species *O. orca*. The status review, however, revealed uncertainties regarding the taxonomic status of killer whales worldwide.

The NMFS will continue to seek new information on the taxonomy, biology, and ecology of these whales, as well as potential threats to their continued existence. Within four years, the NMFS will reconsider the taxonomy of killer whales. If the species has been subdivided in a manner that may allow Southern Resident killer whales to be identified as a DPS, the NMFS will reconvene a BRT to reassess the status of these whales under the ESA.

For further information contact Dr. Thomas Eagle, Office of Protected Resources, Silver Spring, MD (301) 713-2322, ext. 105, or Mr. Garth Griffin, Northwest Regional Office, Portland, OR (503) 231-2005.

Federal Register, Volume 67, Number 126, July 1, 2002, pp. 44133-44138 (37.1 KB text file or 55.2 KB Adobe™ Acrobat™ file).

Petition To Designate Critical Habitat For Bering Strait Stock Of Bowhead Whales Rejected

On August 30, 2002, the National Marine Fisheries Service announced that, in response to a petition received on February 22, 2000 requesting that portions of the U.S. Beaufort and Chukchi Seas be designated as critical habitat for the Western Arctic stock (which is also referred to as the Bering-Chukchi-Beaufort stock, among other names) of bowhead whales, *Balaena mysticetus*, under the Endangered Species Act (ESA), there will be no designation of critical habitat for that population of bowhead whales. The NMFS is exercising its discretion not to propose designation of critical habitat for this population of bowhead whales for the following reasons:

1. The decline and reason for listing the species was overexploitation by commercial whaling, and habitat issues were not a factor in the decline;
2. There is no indication that habitat degradation is having any negative impact on the increasing population in the present;
3. The population is abundant and increasing; and
4. Existing laws and practices adequately protect the species and its habitat.

The NMFS will continue to monitor this stock and protect the bowhead whale and its habitat and will continue to review the appropriateness of designating critical habitat during all subsequent reviews of the status of this species. These reviews will also consider whether there is a need for any additional management measures in order to conserve the Western Arctic stock of bowhead whales.

For further information contact Bradley Smith, Alaska Regional Office, NMFS, Anchorage, Alaska, (907) 271-5006; Michael Payne, Alaska Regional Office, NMFS, Juneau, AK, (907) 586-7236, or Thomas Eagle, Office of Protected Resources, NMFS, Silver Spring, MD, (301) 713-2322, ext. 105.

Federal Register, Volume 67, Number 169, Friday, August 30, 2002, pp. 55767-55771 (32.4 KB text file or 52.3 KB Adobe™ Acrobat™ file).

List Of Impaired Waters For Commonwealth Of Virginia Updated

On July 15, 2002, the Commonwealth of Virginia published its proposed 2002 303(d) Report on Impaired Waters. The Department of Environmental Quality (DEQ) of the Commonwealth of Virginia prepared this report pursuant to section 303(d)(1)(A) of the Clean Water Act (CWA), 33 U.S.C. 1313(d)(1)(A), and implementing regulations at 40 CFR130.7(b). On July 15, 2002, the Virginia Department of Environmental Quality also announced the availability of its 2002 305(b) Water Quality Assessment. The report identifies waters as impaired if they do not support, or only partially support, one or more of five designated uses (*i.e.*, aquatic life, fish consumption, shellfish consumption, swimming, and drinking water). Support of the designated uses is based on attainment of Virginia's water quality standards, which include numeric and narrative criteria. Attainment is determined by the assessment of

all available monitoring data and water quality information. The Impaired Waters List is a compilation of those waters in the Commonwealth of Virginia that are designated water quality limited. The EPA's water quality management regulations resulted in the listing of waters as follows:

- Part I of the list contains waters that do not meet Virginia's numeric and/or narrative water quality standards or criteria. These are the waters that either partially support or do not support one or more of five designated uses. (*i.e.*, aquatic life, fish consumption, shellfish consumption, swimming, and drinking water.) These waters are defined as impaired and are divided into Parts IA (for uses other than shellfish consumption), IB (for shellfish consumption), and IC (impairments influenced by natural conditions) of the list.
- Part II of the list contains those waters where water quality standards are not expected to be met, even with the application of technology based effluent control technology of secondary treatment and best practicable treatment. These are waters where Virginia Pollutant Discharge Elimination System (VPDES) permit effluent limitations need to be more stringent than technology based requirements in order to maintain or attain water quality standards in the receiving stream.

Further information can be found at: http://www.deq.state.va.us/water/303d.html.

Federal Register, Volume 67, Number 142, Wednesday, July 24, 2002, pp. 48470-48471 (4.10 KB text file or 43.8 KB Adobe™ Acrobat™ file).

Department of Environmental Quality. The Virginia 2002 303(d) Report on Impaired Waters. July,2002 (1.67 MB Adobe™ Acrobat™ file).

Pennsylvania Substantially Revises NPDES Regulations

On August 30, 2002, the Commonwealth of Pennsylvania submitted amendments to its Water Quality Regulations (adopted by the Environmental Quality Board on June 20, 2000) (hereinafter the Pennsylvania Regulation Revisions) to the Environmental Protection Agency for review as a revision to the Commonwealth's authorized National Pollutant Discharge Elimination System (NPDES) program pursuant to section 402 of the Clean Water Act (CWA). The Commonwealth has made significant revisions to 25 PA Code Chapters 92 and 97 of the Water Quality Regulations and the EPA has determined that the Pennsylvania Regulation Revision constitutes a substantial revision to Pennsylvania's authorized NPDES program.

The Pennsylvania Regulation Revision includes amendments to 25 PA Code Chapters 92 and 97 of the Water Quality Regulations. These revisions were part of the Commonwealth's Regulatory Basics Initiative (RBI), which was a process to evaluate regulations considering several factors including whether requirements are more stringent than Federal regulations without good reason; impose economic costs disproportionate to the environmental benefit; are prescriptive rather than performance-based; inhibit green technology and pollution prevention strategies; are obsolete or redundant; lack clarity; or are written in a way that causes significant noncompliance. The revision incorporates by reference portions of Federal regulations found at 40 CFR parts 122, 124 and 125 (relating to EPA administered

permit programs; the National Pollutant Discharge Elimination System; procedures for decision making; and criteria and standards for the National Pollutant Discharge Elimination System), so that it is now necessary for permittees and others to refer to Chapter 92 and the Federal regulations. The Commonwealth also significantly revised regulations regarding Sanitary Sewer Overflows (SSOs) and Combined Sewer Overflows (CSOs). Pennsylvania also incorporates requirements of erosion and sediment control for stormwater and construction activities into NPDES permits.

Comments and/or requests for public hearing must be received before October 15, 2002. For further information contact Evelyn MacKnight, U.S. EPA, Region III, 3WP11, 1650 Arch Street, Philadelphia, Pennsylvania, 19103; (215) 814-5717.

Federal Register, Volume 67, Number 169, Friday, August 30, 2002, pp.55841-55842 (7.3 KB text file or 43.4 KB Adobe™ Acrobat™ file).

Navy To Develop WQ-Based NPDES Storm Water Toxicity Specification For Navy Base Point Loma

On Wednesday, September 11, 2002, the Regional Water Quality Control Board San Diego Region (SDRWQCB) adopted *Tentative Order No. R9-2002-0002 NPDES Permit No. CA0109363-Waste Discharge Requirements for U.S. Navy, Naval Base Point Loma, San Diego County*. The NPDES permit (covering all Navy activities on Point Loma, but primarily affecting Naval Submarine Base San Diego) adopted by the SDRWQCB is the first of three intended to cover all Navy facilities on San Diego Bay. The draft permit included language stating that "undiluted storm water runoff associated with industrial activity shall not produce less than 90% survival, 50% of the time, and not less than 70 percent survival 10% of the time, using standard test species and protocol" within two years of the permit's adoption.

In both written comments and oral testimony, the Navy strongly objected to the proposed storm water discharge specification. While not objecting to the applicability of effluent toxicity limits, Navy officials contended that the toxicity specification was scientifically flawed and nearly impossible for even clean water to pass. The proposed limit would probably force the diversion of storm water runoff from nearly all Navy piers and wharfs within the bay into San Diego's municipal sewer system. Navy officials estimated the cost of retrofitting the piers to capture storm-water runoff, and hold it to be pumped to San Diego's Point Loma sewage treatment plant, would likely exceed $100 million. As an additional complication, the Metropolitan Wastewater Department, which operates the Point Loma sewage treatment plant, would not provide the Navy with a guarantee that it even had the capacity or would accept the anticipated millions of gallons of captured storm water.

As an alternative to the proposed storm water permit requirement, Navy Region Southwest proposed to conduct a comprehensive study (developed by a team composed of personnel from Navy Region Southwest, Naval Facilities Engineering Command Southwest Division, and the Marine Environmental Support Office) of storm water discharge toxicity from areas of the submarine base at which industrial

activities are undertaken, and to recommend a scientifically-valid survival rate for acute exposure to discharges of storm water from industrial areas.

The SDRWQCB agreed to allow the Navy four years to conduct toxicity testing and data collection in order to establish an alternative, scientifically-defensible, toxicity limit for industrial storm water discharges that will protect beneficial uses of the receiving water and to meet San Diego Basin Plan Objectives.

California Regional Water Quality Control Board San Diego Region Tentative Order No. R9-2002-0002 NPDES Permit No. CA0109363- Waste Discharge Requirements For U.S. Navy-Naval Base Point Loma, San Diego County.

EPA Releases Report On How Research Can Improve The TMDL Program

On September 9, 2002, the Environmental Protection Agency released "The Twenty Needs Report: How Research Can Improve The TMDL Program." The report summarizes Total Maximum Daily Load (TMDL) science needs identified by the National Research Council (NRC), States and Tribes, EPA National and Regional TMDL programs, the private sector, and others. The report, written for the Office of Research and Development (ORD) by the Office of Water (OW), serves as a guide for EPA researchers who can help improve the scientific basis for restoring and protecting impaired waters. The document does not represent or modify the EPA's TMDL program policy or guidance and is limited to analysis and recommendations concerning scientific issues.

The report is available from MESO (101 MB Adobe™ Acrobat™ file) or at http://www.epa.gov/owow/tmdl

U.S. EPA. 2002. The Twenty Needs Report: How Research Can Improve the TMDL Program. *EPA 841-B-02-002, U.S. Environmental Protection Agency Office of Water, Washington D.C. 43 pp.*

In Memoriam

September 11, 2002 -- A Sailor hoists the "Navy Jack" aboard the Salt Lake City (SSN 716) in memory of the September 11, 2001, attacks on America. Under direction of the Secretary of the Navy, Gordon R. England, all U.S. Navy ships will fly the "Navy Jack" in place of the "Union Jack" for the duration of the war on terrorism. The "Navy Jack" is a flag consisting of a rattlesnake superimposed across thirteen horizontal alternating red and white stripes, with the motto, "Don't Tread on Me." U.S. Navy photo (CLEARED)

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